IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7760 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASID BABUBHAI ANSARI

Versus

THE COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for the Petitioner.

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the detention order dated 29.7.2002, by which the petitioner is detained as a "dangerous person" under the Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is served with the grounds of detention of the same date. In the said grounds, there is a reference about two complaints filed against the petitioner under

various Sections of IPC. There is also a reference about Statements of two witnesses. So far as the two criminal cases are concerned, learned Advocate for the petitioner submitted that since the said complaints, on the face of it, were false, the petitioner was released on bail. He submitted that, even otherwise, the said complaints are in the nature of a private dispute and hence, involving violation of law and order, and not public order in case it is found that the petitioner has prima facie committed a punishable offence. He submitted that the offence is in connection with theft or robbery on the part of the petitioner for demanding illegal money. Even according to him, all these statements are fabricated and they are taken only in order to make out case under the preventive detention. Learned Advocate for the petitioner, therefore, argued that this is not a case in which public order is disturbed, but, at the most, it can be said that law and order is disturbed. Under the circumstances, it is submitted that there is no justification in detaining the petitioner under preventive detention. Learned Advocate for the petitioner also further submitted that the last case registered against the petitioner is on 11th June, 2002 and the detention order is passed on 29.7.2002. He submitted that if, really, the alleged activities of the petitioner were such that he can be called a "dangerous person", it was not necessary to wait for more than 45 days to pass the order of detention. It is submitted that by delay in passing the order, the entire object of preventive detention is frustrated. He submitted that delay in passing the order itself shows that the activity of the petitioner is not such that he is required to be detained.

In this connection, learned Advocate for the petitioner relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th

October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.

... ..."

The learned AGP submitted that even though the said delay part is not properly explained, the Detaining Authority has, however, tried to explain the delay in the affidavit-in-reply. He has relied upon paragraph 4 of the affidavit-in-reply, which reads as under :-

" ... ...

4. It is submitted that against the petitioner offence punishable under Sections 325, 322, 504, 506(2), 427, 114 is registered under Crime Register No.343 of 2000 in Limbayat Police Station on 30/10/2000. The second offence is registered under Crime Register No.87 of 2002 on 12/6/2002 punishable under Sections - 376, 511, 354, 366, 368, 452, 325 of the Indian Penal Code. The statements of two witnesses were also recorded. The same were verified by the Detaining Authority. On receiving subjective satisfaction, it was found that the petitioner is a headstrong person and it is necessary to detain the detenu by passing the order of detention.

... ..."

The Detaining Authority has not stated as to on which date the statements were recorded and he has not properly stated as to on what basis time of 45 days is consumed for passing the detention order.

Considering the aforesaid judgment of this Court and considering the delay aspect, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

5th March, 2003 (P.B. Majmudar, J.)

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(apj)